UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MDG INTERNATIONAL, INC.,	)	
Plaintiff,	)	
v.	)	Case No. 1:07-cv-1096-SEB-TAB
AUSTRALIAN GOLD, INC.,	)	
Defendant	)	

DEFENDANT AUSTRALIAN GOLD'S MOTION TO DISMISS CONSTRUCTIVE FRAUD CLAIM

Australian Gold, Inc. ("Australian Gold"), moves to dismiss Count II of MDG International, Inc.'s ("MDG") Complaint, alleging constructive fraud, for failure to comply with the requirements of Federal Rule of Civil Procedure 9(b). In support of its motion, Australian Gold relies on its brief in support, filed contemporaneously herewith and incorporated herein by reference, and states the following:

1. A claim for constructive fraud under Indiana law requires a special relationship between the parties out of which a fiduciary duty arises.

2. With regard to the relationship between MDG and Australian Gold, MDG's claim for constructive fraud alleges only that "Australian Gold, as manufacturer, owes a duty to MDG, its distributor." (MDG Complaint at ¶ 97.)

3. This bare allegation of a contractual relationship between the parties does not sufficiently allege the special relationship necessary to give rise to a fiduciary duty under Indiana law.

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4. Accordingly, MDG has not met the requirements of Federal Rule of Civil Procedure 9(b) that allegations of fraud be pled with particularity.

WHEREFORE, Australian Gold respectfully requests that the Court grant its motion and dismiss Count II of MDG's Complaint for failure to plead fraud with particularity.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 17, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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